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OFFICE OF PETITIONS

In re Application of

Nobuyuki Nakamura

Application No. 10/659,264

Filed: September 11, 2003

Attorney Docket No. 4492-0104P

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DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed January 5, 2007.

The petition is **granted**.

This application was held abandoned June 29, 2006, after no reply was received to the non-final Office action mailed March 28, 2006. The notice set forth a shortened statutory period of reply of three months from its mailing date. Extensions of the time set for reply under 37 CFR 1.136(a) were available. No response was received within the allowable period and the application became abandoned on June 29, 2006. A Notice of Abandonment was mailed November 6, 2006. The instant petition was filed on January 5, 2007. Petitioner maintains that the notice of March 28, 2006, was never received and provides a copy of the relevant docketing calendar as proof of the same.

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as to prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

The application file is being forwarded to Technology Center 3600, GAU 3682 for further processing that may include remailing of the non-final Office action and resetting of the period for reply.

Questions concerning this decision should be directed to the undersigned at (571) 272-3222.

A handwritten signature in black ink, appearing to read "Kenya A. McLaughlin". The signature is fluid and cursive, with the first name "Kenya" being more prominent.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions